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Right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Hilal Elver, submitted pursuant to Assembly resolution 70/154.

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Interim report of the Special Rapporteur on the right to food

Summary

The present report is the first of two successive reports. Its focus is on the right to food in conflict situations. In her report, the Special Rapporteur contextualizes the dire situation of severe food insecurity in several countries currently most affected by internal and international conflict and discusses the existing regulatory architecture of human rights law and international humanitarian law. Despite well-established rules governing these two areas of law, hunger and famine in a variety of combat settings inflict massive casualties and widespread suffering on the civilian population. A principal aim of the Special Rapporteur is to raise awareness about the failure to implement existing norms and guidelines, the non-compliance of States and other political actors with existing norms and the failure to address international criminal behaviour that has a direct impact on the right to food.

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I. General overview

A. Introduction

1. In recent years, despite the encouraging news of declining poverty and hunger worldwide, famine and humanitarian emergencies have tragically returned. On 10 March 2017, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator informed the Security Council that the world was facing the largest humanitarian crisis since the creation of the United Nations. This dramatic statement followed the formal declaration of famine in parts of South Sudan and the urgent call of the Secretary-General for action to prevent its spread.

2. More than 20 million people in north-east Nigeria, Somalia, South Sudan and Yemen were facing devastating forms of food insecurity at various levels.[1] In large part owing to the swift and sustained humanitarian response, the famine status in South Sudan has been downgraded and it has thus far been averted in the other three countries. The number of people on the brink of famine remains worryingly high, however. Beyond these four particularly serious situations, some 70 million people in 45 countries currently require emergency food assistance, an increase of 40 per cent from 2015.[2] Most of these countries are suffering from protracted crises or are in post-conflict situations.

3. The present report is the first of two successive reports. The present report is focused on the right to food in conflict situations, while the second will deal with the humanitarian system and its response to food crises in natural disasters, including climate-related situations.

4. After contextualizing the dire situation of severe food insecurity and the impact of conflict on the right to food, the Special Rapporteur will discuss the current regulatory architecture of human rights law and the international humanitarian law system, which has developed elaborate rules to protect the livelihoods of people in times of war. Despite well-established rules governing these two areas of law, hunger continues to inflict massive casualties in combat zones.

5. The aim of the Special Rapporteur is to discuss whether there is a need for a new legal remedy to address the threat to the right to food, which is one of the most basic human rights. The Special Rapporteur raises concerns about the failure to implement existing norms and guidelines, in particular the non-compliance of States and other political actors. While recognizing the need to adjust the legal coverage of human rights and international humanitarian law in current prolonged conflict situations, she considers whether sufficient political will is present to implement the existing normative structure and if not, what can be done to overcome this deficiency. In today's political climate, there seem to be no adverse consequences for actors who ignore or violate legal standards and rules of practice, which exist for the purpose of alleviating the costs of war to civilians with respect to their right to food.

[1] See www.un.org/sg/en/content/sg/press-encounter/2017-02-22/full-transcript-secretary-generals-joint-press-conference.

[2] The *Global Report on Food Crises 2017* lists the following countries as suffering from widespread or localized food insecurity: Afghanistan, Burundi, Central African Republic, Chad, Democratic Republic of the Congo, Ethiopia, Guatemala, Haiti, Iraq, Kenya, Madagascar, Malawi, Mozambique, Niger, Sudan, Syrian Arab Republic (including Syrian refugees in neighbouring countries), Uganda, Zimbabwe.

B. Definition of famine

6. The Integrated Food Security Phase Classification, a standardized tool that classifies the magnitude of food insecurity, uses five distinct categories to identify the severity of a situation: minimal, which means that more than 80 per cent of households can meet basic food needs; stressed, where at least 20 per cent of households are reducing food consumption and cannot protect their livelihoods; crisis, where at least 20 per cent of households have significant food consumption gaps, leading to high levels of acute malnutrition; emergency, which is an accentuated version of the above; and famine, which is the absolute inaccessibility of food to an entire population or subgroup of a population, potentially causing death in the short term.[3] It further attributes three characteristics to famine: at least 20 per cent of households in a given group face an extreme food deficit, without the ability to cope; acute malnutrition prevalence exceeds 30 per cent; and mortality rates exceed 2 people per 10,000 inhabitants per day. Integrated Food Security Phase Classification categories three, four and five (crisis, emergency and famine) require urgent action.

C. Conflict as a cause of famine

7. While the crises in Nigeria, Somalia, South Sudan and Yemen differ greatly in nature, what they all have in common is that they stem from conflict and are human-made. Along with other factors such as natural hazards, demographic growth, shocks to the global food supply and weak governance, conflict is a major cause of food emergencies, which can eventually lead to famine. Rarely, however, do any of these factors alone cause famine; instead, famine results from the convergence of multiple circumstances and reflects the influence of political decision-making.

8. Conflict can trigger food insecurity through the loss of assets, the undermining of communities' coping capacities and the breakdown of social support systems. The right to adequate food may be endangered in various ways, including through the disruption of agricultural activity, the deterioration of food-related economies and the deliberate undermining of access to food and humanitarian assistance by parties to the conflict. This in turn weakens resilience to absorb or recover from other shocks, such as the impacts of climate change or the volatility of food prices. Conflict also tends to exacerbate existing inequalities, leaving already vulnerable segments of society particularly exposed to food insecurity, and can cause massive internal and external displacement. While it will not be analysed in detail herein, it is also important to recognize that food insecurity often contributes to social and political unrest, which may lead to a negative spiral of conflict and hunger.

9. Contrary to popular belief, casualties resulting directly from combat usually make up only a small proportion of deaths in conflict zones, with most individuals in fact perishing from hunger and disease. Global rates of acute malnutrition have been rising since 2008. According to the Food and Agriculture Organization of the United Nations, "the proportion of undernourished people living in countries in conflict and protracted crisis is almost three times higher than that in other developing countries".[4] In 2016, over 56 million people in more than 20 countries and territories were affected by protracted conflicts and suffered from severe

[3] IPC Global Partners, *Integrated Food Security Phase Classification Technical Manual Version 2.0.: Evidence and Standards for Better Food Security Decisions* (Rome, 2012).

[4] Food and Agriculture Organization of the United Nations (FAO), "Peace and food security: investing in resilience to sustain rural livelihoods amid conflict" (Rome, 2016), p. 4. Available from www.fao.org/3/a-i5591e.pdf.

undernourishment and emergency levels of food insecurity.[5] Since 2000, 48 per cent of civil conflicts have been in Africa, where access to rural land underpins the livelihoods of many people.[6]

D. Current food emergencies in conflict zones

10. Yemen, a country that was already one of the poorest in the Arab region, has seen an alarming rise in rates of acute malnutrition since the beginning of the civil war in 2015. Some 17 million Yemenis — 60 per cent of the population — are food insecure, while 7 million are at risk of famine and acute food insecurity, a situation that is expected to deteriorate further without emergency food assistance programmes immediately being scaled up.[7] A severe cholera outbreak that began in late April is disproportionately affecting malnourished individuals and has exacerbated the nutrition crisis. It has since spread to most of the country's governorates, killing at least 1,600, as a result of lack of access to safe water, poor sanitation and hygiene conditions and the near collapse of the health-care system.[8]

11. The fragile food security situation in South Sudan, a country impoverished by decades of war, has been severely compounded by the outbreak of civil war in 2013. Currently, 5.5 million people are estimated to be in Integrated Food Security Phase Classification categories three (crisis), four (emergency) and five (famine). While the famine status announced at the beginning of 2017 has been downgraded, 45,000 people in Unity and Jonglei are still facing starvation unless they receive sustained humanitarian assistance. The situation also remains dire nationwide, with a significant overall increase in food insecurity: the number of people struggling to find enough food each day has grown to 6 million. Acute malnutrition is also expected to deteriorate further with the beginning of the lean season in July.[9]

12. North-east Nigeria has historically been prone to periodic food crises and comprises some of the poorest federal states of the country. The magnitude of the effect of protracted war between the Nigerian army and the extremist group Boko Haram recently became evident when the group retreated from previously occupied territory. As Boko Haram fell back, thousands were discovered to be living in famine-like conditions. Around 5.2 million people are severely food insecure and in need of emergency assistance, and pockets of famine-like conditions have been identified in Borno and Adamawa States, affecting around 50,000 people.[10] There are still areas under the control of Boko Haram that aid agencies cannot reach, meaning that the full extent of the conditions facing trapped populations is unknown.

13. In Somalia, which has suffered from enduring conflict, an economic crisis, the ongoing presence of the terrorist group Al-Shabaab, prolonged drought and water shortages, hunger has worsened since the beginning of 2017. Some 6.7 million

[5] FAO and World Food Programme (WFP), "Protracted conflicts causing alarming spikes in severe hunger" (29 July 2016). Available from www.fao.org/news/story/en/item/427423/icode/.

[6] FAO, "Peace and food security".

[7] FAO, "Yemen situation report: July 2017". Available from www.fao.org/fileadmin/user_upload/emergencies/docs/FAOYemen_sitrep_July2017.pdf.

[8] See http://unog.ch/unog/website/news_media.nsf/(httpBriefingsLatest_en)/645EBAD80BA7F18EC1258153004F210E?OpenDocument.

[9] IPC Global Partners, "IPC in South Sudan: food insecurity situation still dire and widespread", IPC Alert, No. 8 (21 June 2017). Available from http://reliefweb.int/sites/reliefweb.int/files/resources/IPC_Alert_8_SouthSudan_May2017.pdf.

[10] Information received from the Office for the Coordination of Humanitarian Affairs in July 2017.

people, or more than half of the population, are facing acute food insecurity, of whom 3.2 million are severely food insecure.[11,12]

II. Impact of protracted conflict on the enjoyment of the right to food

14. The enjoyment of the right to food is hampered by conflict in various ways, affecting the availability, accessibility, adequacy and sustainability of food supplies.

A. Disruption of the agricultural sector

15. Agriculture plays an extremely important role in resilience and survival in times of crisis. Some 2.5 billion people worldwide depend on it and it is the main source of income for the populations of many of the countries currently suffering from conflict.[13,14]

16. Conflict tends to disrupt food production and deplete seed reserves by limiting agricultural activities. Farmers may be unable to work owing to restrictions on their movement or because they have fled or have been forcibly recruited into armed forces or militias. Crops are often plundered or destroyed, serious damage may be inflicted on farming and fishing infrastructure and vital agricultural input may be difficult to come by. Pastoralists and herders are particularly vulnerable to losses of livelihood, being either forced to abandon their livestock, or if bringing them, facing challenges of gaining access to feed and water. Conflicts also often disrupt livestock markets and veterinary services, block migration routes and may lead to the killing of animals.[15]

17. In South Sudan, up to 95 per cent of the population depends on farming, fishing or herding to meet their food and income needs.[16] While in times of peace the country can feed itself, conflict has severely curtailed crop production. In mid-2016, for example, many parts of the country were producing sufficient food for the local populations.[17] However, violence and mass displacement forced farmers from their fields during key planting times, crops were intentionally destroyed and livestock looted. Some 110 million square metres of land are estimated to be contaminated by landmines and explosive remnants of war and the livestock sector has lost $2 billion in potential gross domestic product during the current conflict.[18]

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[11] FAO, "Situation report: Somalia" (14 June 2017). Available from www.fao.org/emergencies/resources/documents/resources-detail/en/c/896083/.

[12] FAO, "Intensified efforts and investments needed to keep famine at bay" (6 July 2017). Available from www.fao.org/news/story/en/item/903719/icode/.

[13] United Nations Conference on Trade and Development, *Commodities and Development Report 2015: Smallholder Farmers and Sustainable Commodity Development* (New York and Geneva, 2015). Available from http://unctad.org/en/PublicationsLibrary/suc2014d5_en.pdf.

[14] FAO, "Peace and food security".

[15] FAO, "Livestock in protracted crises: the importance of livestock for resilience-building and food security of crisis-affected populations" (2016). Available from www.fao.org/3/a-i6637e.pdf.

[16] FAO, "FAO in emergencies: South Sudan" (2017). Available from www.fao.org/emergencies/countries/detail/en/c/147627/.

[17] The Conversation, "How South Sudan's warlords triggered extreme hunger in a land of plenty" (1 March 2017). Available from http://theconversation.com/how-south-sudans-warlords-triggered-extreme-hunger-in-a-land-of-plenty-73380.

[18] FAO, "Peace and food security".

18. Similarly, the Boko Haram insurgency in north-east Nigeria has severely damaged some of the country's main food-growing areas, with farmers staying away from their fields for security reasons. In 2015, the production of various staple crops in north-east Nigeria fell by an average of 76 per cent compared with output levels in the four previous years.[19] Where farmers are still producing, they face severe difficulties in reaching markets owing to the destruction of transport routes and the risk of being ambushed. Fishers have been unable to gain access to waters owing to military operations and Boko Haram has appropriated the fishing industry as a key source of income. In the Lake Chad region in general, the conflict has led to the closure of some of the largest markets in Africa, having an impact on cross-border trade in cattle, dried fish and agricultural products.[20] Local agricultural systems in the region have been disrupted by the destruction of farming and irrigation facilities and the crisis is intensifying challenges already faced in relation to cyclical droughts and floods.[21]

19. Yemen experienced a reduction of 30 per cent in agricultural output and a decrease of 70 per cent in fishing in 2016.[22] Access to farmland and extension services continues to deteriorate as a result of the conflict, while blockages of land, air and marine ports are having a severe impact on the fishery export sector. Fishing in the coastal areas of Hajjah, Ta'izz and southern Hudaydah has stopped completely and the majority of fishers have lost their livelihood opportunities. Meanwhile, the poultry sector is on the brink of collapse, owing to the deterioration of the population's purchasing power and dependence on costly imported poultry inputs.[23]

20. Before the conflict, the Syrian Arab Republic was the only country in the region that was self-sufficient in terms of food production, with some 40 per cent of livelihoods linked to agriculture. The militarization of the uprising has led many individuals who were previously employed in the agro-industry to become part of the war economy.[24] War has led to the destruction of much of the agricultural infrastructure, and the longer the conflict continues the more costly it will be to restore agricultural capacity. Some $16 billion has been lost in terms of production, along with damaged and destroyed assets and infrastructure within the agricultural sector.[25]

21. In protracted crises, agricultural assets and capacities to cope may become so severely eroded that households are left incapable of resuming their farming activities, because they have sold their farming equipment, lost their herds or are unable to recover abandoned fields, for example, thereby entrenching them in poverty. Sometimes violence can even turn agricultural assets into a liability by, for

[19] Mustapha Muhammad, "Boko Haram insurgency gnawing at Nigeria's food supply", 4 February 2015. Available from www.pressreader.com/nigeria/thisday/20150204/281938836333077.

[20] Oxfam, "Lake Chad's unseen crisis: voices of refugees and internally displaced people from Niger and Nigeria" (2016). Available from www.oxfam.org.hk/filemgr/5167/bn-lake-chad-refugees-idps-190816-en.pdf.

[21] FAO, "Situation report: Lake Chad basin" (April 2017). Available from www.fao.org/emergencies/resources/documents/resources-detail/en/c/879537/.

[22] FAO, *FAO in the 2016 Humanitarian Appeals: Saving Livelihoods Saves Lives* (2016). Available from www.fao.org/3/a-i5320e.pdf.

[23] FAO, "Yemen situation report: July 2017".

[24] Carnegie Endowment for International Peace, "Food insecurity in war-torn Syria: from decades of self-sufficiency to food dependence" (2015). Available from http://carnegieendowment.org/2015/06/04/food-insecurity-in-war-torn-syria-from-decades-of-self-sufficiency-to-food-dependence-pub-60320.

[25] FAO, *Counting the Cost: Agriculture in Syria after Six Years of Crisis* (2017). Available from www.fao.org/fileadmin/user_upload/emergencies/docs/FAO_SYRIADamageandLossReport.pdf.

example, attracting looting and violent attacks by militias. Communities may even refuse humanitarian food rations out of fear of provoking an attack.[26]

B. Economic deterioration

22. Conflict can also severely affect household income and purchasing power. Mass unemployment and the breakdown of social services limit the ability to gain access to food, while currency devaluation, price inflation, market disruptions and reliance on costly food imports owing to shortages may render basic food items prohibitively expensive.

23. In Yemen, which already suffered from chronic underdevelopment, the conflict has further engendered a severe economic downturn. At the beginning of 2017, three quarters of all households were estimated to be experiencing substantially reduced purchasing power.[27] National gross domestic product decreased by approximately 8 per cent in 2016 and the poverty rate has doubled to 62 per cent. Social support mechanisms have all but ceased and public salaries remain unpaid for months.[28] Restrictions on freedom of movement have further deprived individuals of opportunities to make a living. Many of the country's most vulnerable people depend on cash assistance to meet their basic needs.[29]

24. Yemen relies on imports for more than 90 per cent of its staple food. The naval blockade, fighting around the port of Aden and air strikes on the port of Hudayah have severely reduced imports since 2015, leading to alarming price inflation for basic food products.

25. Conflict has also crippled the economy of South Sudan. Fighting has affected oil production, the main source of revenue, and scared off foreign investors. Hundreds of thousands of workers have been displaced by the fighting. High food prices and low agricultural production are exacerbating the situation. Severe inflation has caused the value of the country's currency to fall by 800 per cent in the past year, rendering food unaffordable for many families.[30]

26. In Somalia, conflict coupled with drought conditions has led to trade disruption and high food prices. In Nigeria, the devaluation of the currency as a result of the scarcity of agricultural produce, aggravated by the conflict and the drop in global oil prices, has caused food prices almost to double.[31] According to WFP, in the Syrian Arab Republic, food prices are eight times higher than they were before the crisis and many markets are controlled by powerful actors, leading to steep increases in food prices, especially in besieged cities.

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[26] High-level Expert Forum on Food Insecurity in Protracted Crises, "Agriculture, conflict and stability: a call for renewed focus on protection and conflict sensitive programming in agriculture and food and nutrition security" (2012). Available from www.fao.org/fileadmin/templates/cfs_high_level_forum/documents/Agriculture-Conflict-Stability_Lautze_01.pdf.

[27] FAO, United Nations Children's Fund and WFP, "As Yemen food crisis deteriorates, UN agencies appeal for urgent assistance to avert a catastrophe" (10 February 2017).

[28] WFP, "Special focus: Yemen — what does the conflict-induced public sector crisis mean for food security in Yemen?" (November 2016). Available from http://documents.wfp.org/stellent/groups/public/documents/ena/wfp288497.pdf?_ga=2.1525689.942202997.1500039309-1097001122.1462973308.

[29] Global Protection Cluster, "Briefing note: Nigeria, South Sudan, Somalia, and Yemen are facing famine or a credible risk of famine" (April 2017). Available from www.globalprotectioncluster.org/_assets/files/alerts/gpc_briefing-note_four-famines.pdf.

[30] The Conversation, "How South Sudan's warlord's triggered extreme hunger in a land of plenty".

[31] Oxfam, "Lake Chad's unseen crisis".

C. Deliberate undermining of food security

27. In many situations, parties to armed conflict are unwilling to fulfil their responsibility to ensure access to basic services and goods, including food. They even deliberately undermine the food security of civilians for political or military reasons by intentionally targeting markets and ports, looting or besieging communities with the aim of causing hardship and starvation. They may also deliberately hamper the access and functioning of humanitarian agencies.

28. In the Syrian Arab Republic, the targeting of bakeries by government forces has been widely documented in Aleppo and Homs. Sieges, with the intent of restricting access to food and other critical supplies, have also been used as a weapon of war. At the beginning of 2016, the United Nations believed that some 400,000 civilians were living under siege in 15 towns in the Syrian Arab Republic,[32] with the former Secretary-General warning that the use of starvation as a weapon constituted a war crime. In October 2016, the 250,000 residents of Aleppo were besieged and bombarded, with the Government rejecting the requests of the United Nations to deliver aid.

29. In Yemen, sieges in a number of governorates have prevented staple food items from reaching civilians. Ta'izz, the country's second-largest city, was besieged by Houthi fighters for well over a year, blocking supply routes and leading to dire food shortages. Air strikes carried out by coalition forces have also targeted the country's agricultural sector. The Ministry of Agriculture and Irrigation found 357 bombing targets across the country, including farms, animals, water infrastructure, food stores, agricultural markets and food trucks.[33]

30. In South Sudan, the United Nations has reported that humanitarian convoys and warehouses have repeatedly come under attack.[34] In February, armed groups looted the warehouse of an international non-governmental organization in northern Jonglei, the only distributor of food in the area. In north-east Nigeria, there are also widespread reports that Boko Haram denies access to vehicles transporting food aid and steals their supplies.[35] In the Syrian Arab Republic, the Government has severely constrained relief efforts by humanitarian agencies since the beginning of the conflict. It allows relief operations to be carried out only by registered agencies and has limited the number of visas granted to international staff and restricted their movements.[36]

D. Restrictions on humanitarian assistance in conflict settings

31. The humanitarian food assistance response, which can provide a critical lifeline of support, often faces serious political, security and infrastructure-related impediments that obstruct the effective delivery of food assistance.

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[32] Martin Chulov, "Starvation in Syria remains weapon of war despite partial ceasefire", *Guardian*, 8 April 2016.

[33] Robert Fisk, "Saudi Arabia 'deliberately targeting impoverished Yemen's farms and agricultural industry'", *Independent*, 23 October 2016.

[34] See Office for the Coordination of Humanitarian Affairs, "South Sudan: humanitarian coordinator condemns killing of six aid workers", 26 March 2017. Available from http://reliefweb.int/report/south-sudan/south-sudan-humanitarian-coordinator-condemns-killing-six-aid-workers.

[35] See "UN: World facing greatest humanitarian crisis since 1945", BBC News, 11 March 2017. Available from www.bbc.com/news/world-africa-39238808.

[36] Internal Displacement Monitoring Centre, "Syria: forsaken IDPs adrift inside a fragmenting State" (21 October 2014). Available from www.internal-displacement.org/middle-east-and-north-africa/syria/2014/syria-forsaken-idps-adrift-inside-a-fragmenting-state.

32. Countries suffering from long-standing conflict tend to be particularly fragile and have poor governance and weak infrastructure, which hampers the effective coordination and delivery of food assistance. Interference by political forces and cumbersome negotiations can also slow down the humanitarian response. Following the events of 11 September 2001, counter-terrorism policies have complicated negotiations with certain political actors to gain access to food-insecure areas, as in, for example, Somalia and the Syrian Arab Republic.

33. The delivery of humanitarian assistance may also be seriously hampered by fighting. For example, in April 2017 the forced relocation of 100 aid workers in South Sudan due to active hostilities hampered the delivery of assistance to 180,000 people. In north-east Nigeria, attacks by Boko Haram and military operations against the group continue to limit humanitarian access and an estimated 700,000 people remain extremely hard to reach. Access is further restricted by the presence of mines and improvised explosive devices.

34. In the Syrian Arab Republic and Yemen, sieges have prevented regular and sustained humanitarian deliveries to the affected cities. Humanitarian agencies have, nevertheless, continued their efforts to deliver life-saving assistance through various modalities, for example using air drops where roads are too unsafe or deploying rapid response teams whenever feasible in areas where a permanent presence cannot be established.[37]

III. Groups most at risk

A. Vulnerable populations

35. Conflict often reinforces existing social inequalities and intensifies the denial of human rights experienced by vulnerable populations, including the right to food. In times of conflict, disadvantaged groups, such as children under 5 years of age, orphans, pregnant and lactating women, female-headed households, refugees and internally displaced persons, older persons, persons with disabilities, minorities and already marginalized communities suffering from social exclusion, tend to have less access to resources and the lowest coping capacities, leaving them most vulnerable to the risk of an inadequate diet. Pastoralists, nomadic peoples and indigenous communities are also vulnerable, with conflict having an impact on their access to land, fishing and hunting resources. Lastly, women and girls worldwide already face many inequalities that are embedded in traditional practices and laws, constraining their access to resources and affecting their food security and nutrition.[38,39]

36. According to WFP, in Yemen some 3.3 million children and pregnant or nursing women are acutely malnourished, while an estimated 462,000 children under 5 years of age suffer from acute malnutrition. Children are also particularly susceptible to cholera owing to weak immune systems, poor nutritional intake and unsanitary living conditions.[40]

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[37] See www.unocha.org/sites/unocha/files/ECOSOC%20HAS%202017%20High%20Level%20Event%20on%20Famine%20Prevention%20and%20Response%2016%20June%202017.pdf.

[38] Global Protection Cluster, "Briefing note".

[39] FAO and Asian Development Bank, *Gender Equality and Food Security: Women's Empowerment as a Tool against Hunger* (Mandaluyong City, Philippines, 2013). Available from www.fao.org/wairdocs/ar259e/ar259e.pdf.

[40] Global Protection Cluster, "Briefing note".

37. In South Sudan, it is estimated that 276,000 children and nearly 1 in 3 pregnant and lactating women are malnourished.[41] In Somalia, people have been forced to walk hundreds of miles in search of food, water and shelter, with women and children particularly affected. Some 275,000 children are estimated to suffer from acute malnutrition, making them nine times more likely to die of diseases such as cholera and measles, which are spreading through the country.[42] Exclusion of marginalized groups from food assistance or confiscation of aid has also been witnessed, with clans that have historically suffered from social exclusion particularly affected. In north-east Nigeria, 450,000 children are expected to suffer from acute malnutrition in 2017 and without specialized treatment, 1 in 5 is likely to die.[43]

38. As food insecurity intensifies in the four above-mentioned countries, affected populations are increasingly exposed to physical threats, family separation, further marginalization, gender-based violence and attacks as they search for food and medical care. Extreme food insecurity is forcing people to turn to negative coping mechanisms, including rationing or skipping meals, begging, early marriage, child labour, child recruitment and transactional sex in exchange for food. Access to information on the availability and accessibility of food assistance is also limited, putting vulnerable groups at increased risk of exploitation and abuse.[44]

B. Refugees and internally displaced persons

39. One of the primary effects of conflict is displacement, both internally and across borders. Displacement levels are currently at their highest since records began. A total of 65.6 million people around the world have been forced from their homes, including 22.5 million refugees. Some 28,300 persons are forced to flee every day by conflict or persecution.[45] A study conducted by WFP found that countries with the highest level of food insecurity, together with armed conflict, had the highest outward migration of refugees.[46]

40. Those fleeing conflict are often forced to leave behind their assets, and economic independence may be hampered by the costs of transit, few income opportunities and limited rights in the host State. Host communities may also experience strains on their food supplies, especially if they are already facing economic instability. In situations of massive displacement, humanitarian agencies are often unable to fully meet food demand, leaving displaced communities in dire circumstances.

41. The populations worst affected today include those in Iraq, north-east Nigeria, Somalia, South Sudan, the Syrian Arab Republic and Yemen. Within the Syrian Arab Republic, 6.3 million people are displaced and 5 million have fled to neighbouring countries since the conflict began seven years ago. Most of the

[41] United Nations News Centre, "Food insecurity threatens children in Yemen, South Sudan, Nigeria and Somalia" (23 June 2017). Available from www.un.org/sustainabledevelopment/blog/2017/06/food-insecurity-threatens-children-in-yemen-south-sudan-nigeria-and-somalia-unicef/.

[42] Ibid.

[43] Ibid.

[44] Global Protection Cluster, "Briefing note".

[45] Office of the United Nations High Commissioner for Refugees (UNHCR), "Figures at a glance". Available from www.unhcr.org/figures-at-a-glance.html.

[46] WFP, "At the root of exodus: food security, conflict and international migration" (2017). Available from https://docs.wfp.org/api/documents/WFP-0000015358/download/.

refugees live in urban or peri-urban communities and many have been pushed into poverty and are unable to secure sufficient food.[47]

42. The sheer scale of the Syrian humanitarian crisis has stretched aid agencies beyond their capacities. In late 2014, WFP was forced to scale back its operations owing to a severe funding shortfall.[48] The continuous stream of refugees has also strained host countries, in particular Lebanon, where refugees account for approximately 25 per cent of the population. In Iraq, which is already hosting thousands of internally displaced persons and other refugees, the Government has struggled to extend assistance to Syrian refugees. Syrians living in Jordan, Lebanon and Turkey are mostly reliant on external assistance and poorly paid casual labour, with worsening conditions spurring thousands to make the perilous journey to Europe.[49]

43. According to WFP, in Yemen approximately 3.1 million people are internally displaced. According to the Task Force on Population Movement, worsening conditions have forced around 1 million of those uprooted to return to conflict-riven locations, mostly as a result of food shortages and malnutrition, which are alleged to be widespread in 84 per cent of locations where internally displaced persons live. Lack of income, high food prices and prohibitive geographic distances are all factors hampering the access of displaced persons to food.[50]

44. Worsening violent conflict in north-east Nigeria, which is also spilling over into Cameroon, Chad and the Niger, has led to the displacement of 2.7 million people and forced 210,000 Nigerians to become refugees in neighbouring countries.[51] Owing to a combination of government policy and access difficulties, humanitarian assistance has focused mainly on official camps, often excluding those living with hosts. Already suffering from chronic underdevelopment and the debilitating effects of climate change, impoverished host communities are being placed under extreme pressure and are in urgent need of assistance.[52,53] Meanwhile, serious funding gaps have forced WFP to begin reducing rations, and there are concerns that the food security situation will deteriorate further if adequate levels of assistance cannot be provided.[54]

IV. Protection of the right to food in situations of conflict

45. In recent decades, the international humanitarian response system has been essential in reducing the negative impacts of conflict on food security and lowering death tolls. Emergency aid plays a critical role in filling gaps in situations where States themselves are unable or unwilling to meet the basic needs of their populations. In many of today's conflicts, the humanitarian system is in essence

[47] Ibid.

[48] WFP, "Funding shortfall forces WFP to announce cutback to Syrian food assistance operation" (18 September 2014).

[49] WFP, "At the root of exodus".

[50] International Organization for Migration and UNHCR, "Multi-cluster needs assessment of IDPs, returnees and host communities in Yemen: Task Force on Population Movement" (21 February 2017). Available from http://reliefweb.int/report/yemen/multi-cluster-needs-assessment-idps-returnees-and-host-communities-yemen-task-force.

[51] UNHCR, "UNHCR steps up support amidst large-scale returns to Northeast Nigeria" (1 June 2017). Available from www.unhcr.org/news/press/2017/6/593013454/unhcr-steps-support-amidst-large-scale-returns-northeast-nigeria.html.

[52] Oxfam, "Lake Chad's unseen crisis".

[53] FAO, "Situation report: Lake Chad basin".

[54] WFP, "Insecurity in the Lake Chad basin: regional impact", Situation Report No. 25 (30 April 2017).

asked to take over basic functions from States and parties to the conflict. Yet it is essential to reaffirm that it is first and foremost for States and parties to the conflict to uphold their responsibilities under the applicable legal frameworks for ensuring the right to food in contexts of acute food insecurity.

46. Several branches of international law, including human rights law, international humanitarian law and international criminal law, contain norms that apply to the right to adequate food in conflict situations.

A. International human rights law

1. Applicability in situations of conflict

47. Traditionally, the main distinction between international human rights law and international humanitarian law was that the former applied to situations of normality and peace and the latter to situations of conflict. It is now widely recognized, however, that this distinction is misleading as international human rights law applies in both situations.[55]

48. The Human Rights Committee has recognized the applicability of the International Covenant on Civil and Political Rights to both international and non-international conflicts. In its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, it confirmed that international humanitarian law and international human rights law were complementary rather than mutually exclusive. The applicability of economic, social and cultural rights specifically during armed conflicts has also been recognized and confirmed by the international practice of various organs who derive their establishment from provisions contained in the Charter of the United Nations and human rights bodies.[56]

49. While the International Covenant on Civil and Political Rights contains a derogation clause permitting States to limit the enjoyment of certain rights in situations of public emergency, the International Covenant on Economic, Social and Cultural Rights does not. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have confirmed its application at all times, including in times of conflict and general emergency.[57]

50. In its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee on Economic, Social and Cultural Rights affirms that States have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of rights. This concept is further elaborated in its general comment No. 14 (2000) on the right to the highest attainable standard of health and its general comment No. 15 (2002) on the right to water, confirming the non-derogable nature of these core rights.

2. Protection of the right to food in situations of conflict

51. The human right to adequate food is a core right, indispensable for the enjoyment of all other human rights. In the spirit of the Universal Declaration of Human Rights, article 11 of the International Covenant on Economic, Social and

[55] OHCHR, *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011). Available from www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

[56] Gilles Giacca, *Economic, Social, and Cultural Rights in Armed Conflicts* (Oxford, Oxford University Press, 2014).

[57] Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 3; and E/2015/59, para. 12.

Cultural Rights specifies the scope of the right to adequate food and establishes it as a legally binding obligation of States as part of an adequate standard of living.

52. Article 11 also specifically recognizes "the fundamental right of everyone to be free from hunger", which further imposes an obligation on States to ensure "the satisfaction of, at the very least, [the] minimum essential level" of this right under all circumstances.[58] Freedom from hunger is accepted as part of customary international law, rendering it binding for all States regardless of whether they are a party to the Covenant.

53. The obligations of States with regard to the right to food and other economic, social and cultural rights fall into three categories, namely the obligations to respect, protect and fulfil such rights.[59] As highlighted herein, the neglect of the right to food during a conflict may lead to further human rights violations and even cause further conflict. States have an obligation to refrain from intertering with individuals' enjoyment of their economic and social rights, including the right to food, and are also obliged to protect those rights from interference by third parties, including armed groups.

54. In terms of the fulfilment and progressive realization of rights, States cannot put aside or postpone the realization of the core content of economic and social rights to peacetime, but rather must continue to take deliberate and targeted steps in times of conflict using all appropriate means in order to fulfil those rights, as regressive measures remain prohibited.

55. The prohibition of discrimination also remains intact. In fact, the principle of non-discrimination becomes even more central when there is increased risk of regressive measures owing to emergency situations. In particular, States should eliminate discriminatory laws and practices relating to food policy and remain obliged to adopt measures to protect those most at risk as a priority.[60]

56. In its general comment No. 12 (1999) on the right to adequate food, the Committee on Economic, Social and Cultural Rights provides a comprehensive interpretation of the provisions of the right, including its normative content and States' obligations. In it, the Committee distinguishes between the inability and the unwillingness of States parties to comply, which is a useful distinction in situations of conflict. For a State party to claim it is unable to fulfil the right to food, the burden falls on the State to prove both that internal resource constraints make it impossible to provide access to food and that every effort has been made to seek international support. Failure to prove this would indicate unwillingness and constitute a violation of the International Covenant on Economic, Social and Cultural Rights. In the same vein, in paragraph 19 of the general comment the Committee clarifies that "the prevention of access to humanitarian food aid in internal conflicts or other emergency situations" through the direct action of States or other entities insufficiently regulated by States is considered a violation of the right to adequate food.[61]

57. Besides the legally binding principles of the International Covenant on Economic, Social and Cultural Rights, several non-binding principles and agreements highlight the responsibility of the State and the international community to maintain food security in situations of conflict.

[58] Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.
[59] See Committee on Economic, Social and Cultural Rights, general comment No. 12.
[60] E/2015/59, paras. 31-32.
[61] Ibid.

58. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security[62] refer to humanitarian law and reiterate that food should never be used as an instrument of political and economic pressure and that States should provide for the needs of the civilian population, including access to food in situations of armed conflict and occupation.

59. Guideline 15 provides elaboration on the concept of international food aid in times of emergency, regardless of whether the emergency is as a result of conflict or of natural disaster. In this context, donor States should ensure that their food aid policies support national efforts by recipient States to achieve food security and that assistance is provided in a manner that takes into account food safety, the importance of not disrupting local food production and the nutritional and dietary needs and cultures of recipient populations. Food aid should be accompanied by a clear exit strategy and avoid creating relationships of dependency. Donors should promote increased use of local and regional commercial markets to meet food needs in famine-prone situations, thereby helping to reduce dependence on food aid.

60. International food-aid transactions should be carried out in a manner consistent with the FAO Principles of Surplus Disposal and Consultative Obligations, the Food Aid Convention and the Agreement on Agriculture. The provision of international food aid in emergency situations should take particular account of longer-term rehabilitation and development objectives in the recipient countries and should respect universally recognized humanitarian principles (see guideline 15.2). The assessment of needs and the planning, monitoring and evaluation of the provision of food aid should be made in a participatory manner and in close collaboration with recipient governments at the national and local level (see guideline 15.5).

61. The Framework for Action for Food Security and Nutrition in Protracted Crises was developed by the Committee on World Food Security in recognition of the fact that protracted crises require special attention and that appropriate responses in such contexts differ from those required in a short-term crisis or in non-crisis development contexts.[63] The Framework was endorsed by the States members of FAO in October 2015. While the Framework is voluntary and non-binding, it draws on widely endorsed international and regional instruments and global frameworks, including the Sustainable Development Goals. It is the first formulation of a global consensus to mitigate threats to food security and nutrition during protracted crises. It is intended to improve the conditions of populations affected by or at risk of a protracted crisis by building resilience, adapting to specific challenges and helping to address underlying causes. The Framework is based on 11 principles, including meeting immediate humanitarian needs and building resilient livelihoods; empowering women and girls and promoting gender equality; strengthening country ownership, participation, coordination and accountability; contributing to resolving underlying causes; and peacebuilding through food security and nutrition.

B. International humanitarian law

62. International humanitarian law is a set of rules that seek to limit the adverse effects of armed conflict on civilians. Three of the main rules, based on the principles of distinction, proportionality and precaution, are designed to protect persons not participating in hostilities.

[62] See www.fao.org/3/a-y7937e.pdf.

[63] See www.fao.org/fileadmin/templates/cfs/Docs1415/FFA/CFS_FFA_Final_Draft_Ver2_EN.pdf.

63. While international humanitarian law does not mention the "right to food" as such, many of its provisions are intended to ensure that people cannot be denied access to food during armed conflict. International humanitarian law should be treated as an essential specific legal framework in times of armed conflict that protects peoples' livelihoods and their access to food.[64]

64. International humanitarian law and international human rights law should be seen as mutually reinforcing in the protection of economic and social rights in situations of armed conflict. International humanitarian law differs from international human rights law in the sense that it clearly binds both States and non-State actors by its obligations.[65] It further obliges parties to an armed conflict to implement the relevant rules immediately and not progressively as in human rights law. The rules of international humanitarian law cannot be derogated from in times of armed conflict, in the same way that the minimum core obligations under the International Covenant on Economic, Social and Cultural Rights are considered non-derogable.

65. The four Geneva Conventions of 1949 and two Additional Protocols of 1977 set out the major rules of international humanitarian law. International humanitarian law contains food-related provisions of a preventive nature. It prohibits the use of starvation as a weapon of war, the destruction of crops, foodstuffs, wells and other objects that are essential for the survival of civilians and forced displacement.

66. If prevention fails and malnutrition and hunger become widespread, rules governing humanitarian assistance become applicable, as their primary purpose is the safeguarding of relief undertakings for people in need.[66] Denying or blocking humanitarian assistance is also prohibited under international humanitarian law. All these food-related provisions under international humanitarian law will be dealt with below in more detail.

67. International humanitarian law distinguishes between international and non-international wars. The four Geneva Conventions of 1949 and Additional Protocol I apply to international armed conflicts, including those taking place in the Syrian Arab Republic and Yemen, while Additional Protocol II is applicable to non-international conflicts, including the civil war in South Sudan. The common article 3 of the four Geneva Conventions and customary international humanitarian law are applicable to all wars. The duty to distinguish between civilians and combatants is a key feature of the Additional Protocols.

68. Many provisions of international humanitarian law are accepted as customary law, binding on all whether or not a State is party to the Additional Protocols. The International Committee of the Red Cross (ICRC) conducted a study on customary international humanitarian law and identified 161 rules — 149 of which also apply in non-international wars — that come from general practice and that are, in its view, currently accepted as law and exist independently of the treaties.[67]

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[64] Jelena Pejic, "The right to food in situations of armed conflict: the legal framework", *Revue internationale de la Croix-Rouge*, vol. 83, No. 844 (December 2001), pp. 1097-1109.

[65] Concerning international human rights obligations, in evolving practice it is increasingly considered that under certain circumstances non-State actors can also be bound by international human rights law and can assume, voluntarily or not, obligations to respect, protect and fulfil human rights.

[66] See articles 23, 30 and 142 of the Geneva Convention relative to the Protection of Civilian Persons in Times of War and article 70 (1) of Additional Protocol I for the rules on humanitarian assistance in international armed conflict.

[67] International Committee of the Red Cross, "Customary international humanitarian law". Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/home.

69. Numerous rules apply to specific categories of person to ensure that those who cannot feed themselves are adequately supplied with food. These include prisoners of war, civilian internees and detainees. Special provisions are in place for women and children. There is also a prohibition of adverse distinction, which means that preferential treatment based on specific needs is expressly allowed and sometimes even required.[68]

1. Prohibition of starvation of civilians as a method of warfare

70. Starvation of civilians as a method of warfare is prohibited unconditionally in both international[69] and non-international armed conflicts.[70] Under international humanitarian law, it is prohibited "to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works".[71]

71. These prohibitions are also generally considered to be rules of customary international law, applicable to all types of armed conflicts according to the ICRC study on customary international humanitarian law.[72] The study shows that the prohibition is violated not only when deprivation of food sources and supplies causes hunger, but also when hunger results from the denial of access to food.[73] Rule 54 prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, which includes foodstuffs.

72. Deliberate starvation of civilians could amount to a war crime under international criminal law, which will be discussed in the section on individual responsibility below.

2. Prohibition of forced displacement

73. Displacement is a major factor contributing to hunger and starvation in times of armed conflict. Forced displacement is prohibited under article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and under article 17 of Additional Protocol II. All possible measures must be taken to ensure that civilians are provided with satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of a family are not separated. Unlawful displacement constitutes a war crime under the Rome Statute of the International Criminal Court in both international and non-international armed conflict.[74]

3. Denying or blocking humanitarian assistance[75]

74. The principles and rules governing humanitarian assistance are fundamental for protecting the right to food in situations of armed conflict. Pursuant to General Assembly resolution 46/182, "humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality".

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[68] See articles 20 and 26 of the Geneva Convention relative to the Treatment of Prisoners of War.

[69] See article 54 (1) of Additional Protocol I.

[70] See article 14 of Additional Protocol II.

[71] See article 54 (1) of Additional Protocol I and article 14 of Additional Protocol II.

[72] See rule 53 on starvation as a method of warfare and rule 54 on attacks against objects indispensable to the survival of the civilian population.

[73] ICRC, " Rule 53: starvation as a method of warfare". Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53.

[74] See article 8, paragraphs 2 (a) (vii) and (b) (viii).

[75] Humanitarian food aid in periods of war should be distinguished from food aid in period of peace (see document E/CN.4/2002/58).

75. Parties to an armed conflict have the primary responsibility to meet the needs of the population under their control, including food and water. If parties to a conflict cannot meet those needs, they must allow and facilitate efforts by impartial humanitarian agencies to undertake relief action, including by granting the right of free passage. There are also a series of provisions that relate to relief assistance for civilians in occupied territories under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (arts. 55 and 59) and Additional Protocol I (arts. 68-71). In 2014, ICRC published a useful document on humanitarian access that outlines the various steps of analysis to determine obligations relating to humanitarian access.[76]

76. States are required to grant the free passage of humanitarian assistance for specific categories of people, such as pregnant women and children, even if such persons belong to an adversary State or enemy non-State party.[77] Article 70 (1) of Additional Protocol I extends this coverage to all civilians.

77. States cannot refuse permission to deliver food except in exceptional conditions, such as a credible claim of military necessity. The military necessity argument can be invoked only to regulate humanitarian access, not to prohibit definitively the possibility for an impartial humanitarian organization to operate in certain areas. Moreover, military necessity can be invoked only to restrict humanitarian assistance temporarily and within specific geographical limits. To refuse passage would constitute a flagrant violation of the right to food and the right to life, especially if civilians die of hunger as a result. Wilfully impeding relief supplies is listed as a war crime under article 8, paragraph 2 (b) (xxv), of the Rome Statute.

78. In international armed conflicts, specific rules exist that regulate the provision of basic relief supplies to civilians in territories under the control of a party to the conflict.[78] Consent on behalf of the receiving State with respect to humanitarian assistance is necessary in both international and non-international armed conflicts and has given rise to a debate on resolving tensions between State sovereignty and emergency humanitarian relief.

C. International criminal law: individual criminal responsibility

79. Individual criminal responsibility is fundamental to ensuring accountability for violations of international human rights and humanitarian law. Certain gross or serious violations of international human rights and humanitarian law have been considered of such gravity by the international community that they have been regulated under international criminal law, imposing individual criminal responsibility. These crimes could be prosecuted not only nationally but also internationally. Article 5 of the Rome Statute provides the most complete and updated definition of relevant international crimes, namely genocide, crimes against humanity and war crimes.

[76] ICRC, "ICRC Q&A and lexicon on humanitarian access" (2014). Available from www.icrc.org/eng/assets/files/2014/icrc-q-and-a-lexison-on-humanitarian-access-06-2014.pdf.

[77] See article 23 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

[78] These rules can be found mainly in articles 70 and 71 of Additional Protocol I and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Rules of international humanitarian law applicable in non-international armed conflicts are mainly found in article 3 common to the four Geneva Conventions, article 18 (2) of Additional Protocol II, and customary international humanitarian law (see *Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework*, version 2, December 2014).

80. Although historically starvation and famine were permitted tactics of warfare by States, it is now widely accepted by the international community that intentionally caused famine and forced starvation are forbidden under international law. Despite this agreement, this is unfortunately still occurring.

81. Current conflicts in Afghanistan, the Central African Republic, Iraq, South Sudan, the Syrian Arab Republic and Yemen, as well as several other countries, are undermining food security and the right to food on a daily basis.[79] In some cases, States and their adversaries use food as a weapon against opposing groups by destroying or poisoning crops, blocking relief supplies and displacing people from their homes with the aim of depriving them of their livelihoods. In other cases, vulnerable groups, such as women, children, detainees and prisoners of war, are subject to neglect or left to starve. Such actions do not necessarily result in violations of the right to food but may constitute war crimes, crimes against humanity or genocide, which could give rise to individual responsibility under international criminal law.

1. Definition of related crimes under the Rome Statute

82. In addition to enumerating specific offences, article 7 of the Rome Statute defines crimes against humanity in a somewhat open-ended manner that can be interpreted as including famine: "inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health". Armed conflict is not a precondition, although the acts must occur in a seriously stressed situation in which starvation results from officially adopted policies and practices.[80]

83. A crime against humanity has two components: first, the accused must deliberately perpetrate the acts necessary to accomplish the specific offence, and, second, the act must be committed as part of a "widespread and systematic attack" directed against the civilian population. Famine automatically satisfies the second requirement because by definition it is widespread and systematic. The first requirement is harder to satisfy, however.

84. The intentional use of starvation as a weapon is clearly forbidden in all types of conflicts, but it is classified as a war crime only in international armed conflicts under article 8 (2) (b) (xxv) of the Rome Statute. Article 8 distinguishes between international armed conflicts and non-international armed conflicts. Acts punishable under the Rome Statute as war crimes are mainly, but not always, identical in both types of conflict. While a distinction is legally justified for certain war crimes, this is not always the case. In fact, some of the "serious violations of the laws and customs" are considered to constitute war crimes under international law in both international armed conflicts and non-international armed conflicts, but the Rome Statute nonetheless only explicitly penalizes them in international armed conflicts. A prime example of this oversight is the crime of intentionally using the starvation of civilians as a tactic of warfare. This oversight should be corrected.

2. Famine as an international crime

85. International criminal law already criminalizes certain conduct that leads to famine, but the legal treatment of allegations of famine has not been consistent. Many legal doctrines support an indictment for such behaviour (genocide, war

[79] FAO and WFP, "Monitoring food security in countries with conflict situations: a joint FAO/WFP update for the United Nations Security Council (July 2016)". Available from www.fao.org/3/a-c0335e.pdf.

[80] S. I. Skogly, "Crimes against humanity — revisited: is there a role for economic and social rights?", *International Journal of Human Rights*, vol. 5, No. 1 (2001), pp. 58-80.

crimes and crimes against humanity), but the international community has never called for an international criminal trial against government officials or non-State actors for creating, inflicting or prolonging famine, in part because of the legal and political complexities surrounding charges of criminality.[81]

86. Famine becomes a crime if there is sufficient evidence of an intentional or reckless effort to block certain groups from access to food under conditions of conflict or hardship. The crime of famine could result from acts of omission, but also from indirect action such as blocking humanitarian assistance, failing to uphold the relevant laws of war or failing to provide international relief systems with the necessary resources in the context of famine conditions.

87. Crimes of famine depend upon showing that the action of those responsible is either intentional or reckless.[82] To prove specific intent as the basis for criminal responsibility is difficult as death from starvation is slow and often results from diverse contributory causes.

88. It is especially problematic to prosecute someone accused of committing the crime of famine in a non-international conflict. Famine normally occurs in conjunction with other severe crimes and as such the judgments rendered often do not identify famine as an independent crime.

89. It is important to acknowledge the gap between what the law prescribes and the feasibility of its implementation, and what steps need to be taken to close the gap. Formal codification of individual responsibility pertaining to famine and severe food insecurity would clarify the conditions of criminality. At present, legal authority is scattered and fragmented. The coherent formulation of the content of the crime in an authoritative text would be an important contribution to the development of international law in this setting, where the most fundamental human rights are currently subject to massive abuse without the activation of accountability procedures.

90. The establishment of the International Criminal Court was an important step forward, but its potential remains essentially unrealized at present. It is theoretically possible to bring to justice those responsible for allowing their populations or those of their adversaries to starve to death during an armed conflict, but the political will to do so is not clearly manifested or even consistently present.

V. Conclusion and recommendations

91. **The interdependence of food insecurity and armed conflict has become clearer in recent years. Contemporary armed conflicts increasingly do not differentiate between military operations and concentrations of civilians, and entire countries are being treated as battlefields. The expansion of combat zones exacerbates violations relating to food and water, which in turn gives rise to hunger and disease. Such patterns escalate violence and in turn increase human suffering. Starvation and famine are large-scale violations of the right to food that can adversely affect entire societies while at the same time severely harming individuals and their families.**

92. **Considering the current situation of famine in protracted conflict and post-conflict areas, as aggravated by climate change, the present lack of political interest and funding shortages, there is a need for a global convention**

[81] David Marcus, "Famine crimes in international law", *American Journal of International Law*, vol. 97, No. 2 (2003), pp. 245-281.

[82] Ibid.

that gives States and the international community clear legal mandates to prevent famine and protect peoples' right to adequate food. This protection cannot be reliably achieved on a voluntary basis. If the international community is serious about the imperative character of the right to food and the eradication of serious food insecurity, steps must be taken to encourage the implementation of existing standards and to codify and elaborate on existing international law as it applies to food security. First, a binding agreement should be put in place to cover essential elements of conflict prevention, prohibitions associated with famine and starvation, and post-conflict rehabilitation of the agricultural sector. Second, steps should be taken to maximize local and regional sourcing of food for aid, including increasing developmental assistance for long-term recovery. Lastly, international legal standards should be developed that strongly reinforce the norm that deliberate action taken to cause starvation is a war crime or a crime against humanity and that in the most serious cases these should be referred to the International Criminal Court for investigation and prosecution. Formal recognition of famine as a crime will impede the tendency of Governments "to hide behind a curtain of natural disasters and state sovereignty to use hunger as a genocidal weapon".[83]

93. **Considering that most conflict-prone countries are agriculture-based economies, the facilitation of a return to farming or fishing is key to the successful reintegration of ex-combatants and victims in post-conflict situations. Replacing lost productive assets is not enough, however. Countries that have recently emerged from conflict are prone to slip back into conflict again. There is a need to make a robust transition from subsistence farming to more sustainable livelihoods. For the transition period, interventions to support peasants, smallholder farmers and marginal fishers are needed, with priority for decommissioned combatants and women. These groups constitute the largest segments of the workforce in current conflict zones. The capacity of these agricultural workers to jump-start their livelihoods could be greatly enhanced by providing them with an understanding of how markets work, facilitating their access to improved production systems and making their farms more resilient.**[84]

94. **Long-term policies are essential if the international community is to avoid the periodic recurrence of famine. In their absence it should come as no surprise that current challenges will have a spillover effect in peacetime. This is a far more realistic prospect than expecting famines to disappear as soon as the guns fall silent. Human rights violations, war crimes, repression and all sorts of inequality are conditions that frequently generate famine. The attention and commitment of the international community must, as a matter of the highest priority, be directed at eliminating these root causes of famine, and not addressing just the visible symptoms of the prior food catastrophe.**[85] **An effective preventive approach to famine is likely to save many more lives than the current reactive approach.**

95. **To protect the right to food in situations of conflict the Special Rapporteur makes the recommendations set out below.**

96. **States should:**

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[83] Ibid.

[84] The work of FAO in Mindanao, the Philippines, is a good example of such rehabilitation. See FAO, "Peace and food security".

[85] Alex de Waal, *Mass Starvation: The History and Future of Famine* (forthcoming)

(a) Take specific steps to ensure that national legislation provides a framework that recognizes the State's obligations to respect, protect and fulfil the human right to adequate food both in times of peace and in situations of conflict;

(b) Take all necessary legislative, judicial and budgetary measures, considering that to guarantee the minimum core content of the right to food, "freedom from hunger", is obligatory at all times;

(c) Guarantee that food assistance reaches the entire population in conflict zones without discrimination and distribute the maximum available resources in a non-discriminatory manner;

(d) Prevent, punish and redress attacks by armed groups against sources of food production and the blocking of humanitarian aid convoys, as these are key elements for the realization of the right to food and international humanitarian law commitments;

(e) Prioritize the availability, accessibility and adequacy of food for the most vulnerable populations, including internally displaced persons and refugees;

(f) Codify national criminal law that absolutely prohibits the starvation of civilians as a method of warfare and forced displacement and recognizes the blocking of humanitarian assistance as a crime subject to prosecution individually, either in national courts or, following extradition, international courts.

97. **The international community should:**

(a) Establish a workable early warning system designed to warn of imminent famine conditions with a view to minimizing death, devastation and the outbreak of serious diseases;

(b) Call for an amendment of the Rome Statute to add famine as a potential international crime, whether or not it occurs in an international or non-international armed conflict;

(c) Urge ICRC to convene as soon as possible a conference of States parties to the Geneva Conventions to revise international humanitarian rules and principles with a view to ensuring that the crime of famine is no longer subject to impunity;

(d) Revise the rules in relation to refugees to ensure that host countries provide legal status for refugees so that they are able to work, earn a living and protect their assets;

(e) Secure international funding other than voluntary contributions by establishing mandatory contributions at the international level, following the example of the Green Climate Fund;

(f) Appoint a special study group on behalf of the United Nations High Commissioner for Human Rights to lay the groundwork for a new international treaty that will address the root causes of famine and provide a legal foundation for the work of famine prevention.